

Via Electronic Mail: dtc.efiling@mass.gov

January 19, 2021

Shonda Green
Department of Telecommunications and Cable
1000 Washington Street, Suite 600
Boston, MA 02118-6500

Re: D.T.C. 20-4; Petition to Remove Surety Bond Requirement for Utility License Agreements for Municipalities

Dear Ms. Green,

Massachusetts Electric Company d/b/a National Grid (“National Grid” or the “Company”) provides the following response to the Town of Shutesbury’s (“Town”) Petition to Remove Surety Bond Requirement for Utility License Agreements for Municipalities submitted to the Massachusetts Department of Telecommunications and Cable (“DTC”) dated December 1, 2020 (“Petition”) in the above-captioned docket. This letter explains why National Grid requires surety bonds for pole attachers and why the practice is an important aspect of ensuring all attachments are provided in a safe and reliable manner. The Company requests that the DTC deny the Town’s Petition.

The Town takes issue with the Company’s requirement in the pole attachment license agreement to maintain a surety bond to guarantee payment for all costs of removal of the attachment if the Town ceases to comply with the agreement or if the Town declares bankruptcy and cannot pay under the agreement. Petition at 1. The Petition lists the reasons the Town believes that the surety bond requirement should not apply to municipalities, which include: the difficulty that a small town has negotiating with pole owners; the claimed unlikely event that the Town declares bankruptcy and would not be able to pay; the claimed unlikely event that National Grid would need to exercise the surety bond; and that the Town does not require a surety bond for utilities for pole removal work. Petition at 2-3.

National Grid respectfully disagrees and maintains that the surety bond is an important and crucial component of the pole attachment agreement for any entity that wishes to attach to a pole. As a pole owner, National Grid must provide nondiscriminatory access to its poles for attachment. M.G.L. c. 166, §25A; 220 CMR §§ 45.01 and 45.03. The Company’s policy is to require a surety bond of any entity, including municipalities and CATV corporations, that wish to attach to the Company’s poles. The Town has not provided sufficient evidence to support its request that DTC allow a municipality with pole attachments to avoid the requirement to provide a surety bond and instead relies on generalities about the difficulties of getting such a bond and the claimed unlikely

situation where the municipality would be bankrupt. Such claims do not negate a pole owner's contractual right to make sure the entities attaching to its poles have the ability to cover incidental costs incurred due to that entity's attachments. Allowing municipalities to avoid a common contractual requirement to provide a surety bond would be akin to preferential treatment and expose National Grid as the pole owner to potential additional costs due to substandard work, failure to pay, or other contractual breaches on behalf of municipal pole attachers. Such costs would then fall onto the Company's ratepaying customers, which would violate the cost-causation principle that pole attaching entities should pay for the incremental costs associated with pole work.

Surety bonds are a standard requirement for construction work. A surety bond is a guarantee for failure to pay for work, such as cost of removal, or other obligations under the agreement, such as annual fees. National Grid requires pole attaching entities to provide a surety bond, which is essentially a form of credit, to ensure that if there are incidental costs as a result of the attachment, National Grid has at least partial assurance that the entity will cover those costs. These incidental costs may include: rework or repair costs incurred by National Grid to fix substandard attachment work; cost of removal if the pole attacher violates the agreement and is no longer permitted to attach to the pole; and annual license fees. National Grid does a substantial amount of construction in Massachusetts and in the Company's experience, it is standard practice of municipalities to require National Grid to provide a surety bond for the same reasons the cited here.

The Town asserts that these risks of failure to pay are somehow minimized because of its municipal status. The Town claims it is not a "transient" entity and is more stable than CATV corporations and that if bankruptcy were declared, all contractual obligations would be met and the Town's fiber system would be sold, not removed. Petition at 2. Although National Grid appreciates the Town's commitment to its contractual obligations, no one can guarantee what the future holds and how an insolvent municipality would be forced to handle a bankruptcy. Even though the Town deems the chance of bankruptcy an "unlikely event," prudence requires National Grid to ensure pole attachers are properly able to support any incidental, unforeseen costs and annual pole fees. Moreover, National Grid has an obligation to its customers to ensure that a pole attacher will bear the cost of any incidental work required as a result of that attacher's substandard attachment work, cost of removal, or failure to pay annual fees. If the surety bond provision were removed for municipal pole attachers, National Grid would be exposed to a higher level of risk to bear incidental costs whenever a municipality attaches to a pole.^{1,2}

There is also an important distinction to be made with respect to a municipality using pole attachments to provide necessary government functions, such as police and fire, and the Town's use of the attachments in this instance, which is a commercial venture to provide

¹ National Grid has approximately 36 municipalities with pole attachments.

² As for the University of Massachusetts license agreement, according to National Grid's records, this agreement does have a surety bond requirement, so the Company is not clear on the Town's argument regarding this matter. Petition at 3. Additionally, it should be noted that the license agreement allows National Grid to waive the surety bond requirement, should it deem it appropriate.

telecommunications services to its constituents. National Grid exempts certain government-function pole attachments from the surety bond requirement (i.e., police and fire). However, when a municipality is pursuing a commercial endeavor, it is appropriate to require the municipality to provide the same financial security as any other provider.

For these reasons, National Grid maintains that a surety bond is a reasonable, necessary, and essential contractual requirement for pole attachers, including municipalities. If DTC does not deny the Town's Petition, National Grid requests a hearing be convened, in accordance with 220 C.M.R. § 45.05(3). In support of the factual statements contained here, attached please find the affidavit of Joy A. Banks.

Please contact me with any questions. Thank you for your attention to this matter.

Very truly yours,



Andrea G. Keefe

Enclosures

cc: Mark A. Merante, Presiding Officer, Department of Telecommunications and Cable
Service List, D.T.C. 20-4

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE


D.T.C. 20-4

Affidavit of Joy A. Banks

I, Joy A. Banks, do attest and swear to the following:

1. I am Lead Data Analyst of Third-Party Attachments – New England for National Grid USA Service Company, Inc. (“Service Company”). My current duties include management of third-party pole attachment responsibilities for National Grid’s electric distribution activities in New England, including those of Massachusetts Electric Company d/b/a National Grid (“Company”).
2. The attached response and the factual statements contained therein submitted on behalf of the Company are true and accurate to the best of my knowledge and belief.

Signed under the pains and penalties of perjury,

A handwritten signature in black ink that reads "Joy Banks". The signature is written in a cursive, flowing style. The "J" is large and loops around the "oy". The "Banks" is written in a similar cursive style. The signature is positioned above a horizontal line.

Joy A. Banks

Date: January 19, 2021

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

Petition to Remove Surety Bond Requirement for
Utility License Agreements for Municipalities

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D.T.C. 20-4

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served the foregoing document in the above-referenced docket upon all parties of record in this proceeding in accordance with the requirements of 207 C.M.R. 1.05 by e-mail.

Respectfully submitted,



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Date: January 19, 2021